

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HUNG HA,

No. C 12-80244 MISC

Plaintiff,

v.

**ORDER ON PRE-FILING
REVIEW OF COMPLAINT**

MITCH CELAYA, IN HIS OFFICIAL
CAPACITY AS CHIEF OF UCPD,
SIMARTINEZ, BADGE #56, UCPD, AND
DOES,

Defendants.

The undersigned judge has reviewed plaintiff Hung Ha's complaint pursuant to the pre-filing review order issued by Magistrate Judge Larson on July 29, 2010. In a prior pro se action brought by plaintiff against twenty-five defendants, including the United States Attorney General, Magistrate Judge Larson found Mr. Ha to be a vexatious litigant and required pre-filing approval for all of plaintiff's future civil pro se filings in this district. This order finds that Mr. Ha's proposed complaint is frivolous and fails to state a claim. Leave to file the proposed complaint is **DENIED**.

The complaint alleges that plaintiff entered the Recreational Sports Facility at the University of California at Berkeley sometime in the evening of October 5, 2012. Plaintiff was approached by several U.C. Berkeley officers and a security guard. The officers stated he was violating rules, such as having no shoes. One of the officers allegedly issued a stay-away order to plaintiff, at which point he protested and was "kidnapped" off the University campus.


1 The complaint alleges claims under Section 1983 for violations of the 1st, 4th, and 14th
2 Amendments against Officer Simartinez, Mitch Celaya, “and if necessary, the Chancellor of the
3 UCB.” The complaint is styled as a putative class action consisting of persons who “come upon
4 UC Berkeley for a wide variety of lawful purposes” Plaintiff’s complaint is very similar to
5 an earlier complaint he filed against various U.C. Berkeley police officers and employees who
6 work at the university’s Recreational Sports Facility. In that action, plaintiff alleged violations
7 of his constitutional rights in expelling him from the facility and revoking his membership
8 privileges (*Hung Ha. v. Sweet B., et al.*, No. 09-1392). Upon review of plaintiff’s application to
9 proceed *in forma pauperis*, Judge Susan Illston dismissed the complaint for failure to state a
10 claim. The order dismissing the action found that plaintiff had not alleged a constitutional
11 violation and could not establish liability against the officers. Plaintiff’s complaint was
12 dismissed without leave to amend, as no amendment could cure the fundamental flaws inherent
13 in plaintiff’s federal Section 1983 claims.

14 Plaintiff’s current complaint fares no better. Plaintiff has failed to allege a constitutional
15 violation, and the defendant officers are likely entitled to qualified immunity based on their
16 reasonable belief that their conduct was lawful.

17 For the reasons stated above, leave to file plaintiff’s proposed complaint is **DENIED**. The
18 Clerk shall close the file.

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20 **IT IS SO ORDERED.**

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22 Dated: October 22, 2012.

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25 WILLIAM ALSUP
26 UNITED STATES DISTRICT JUDGE
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